



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

David Filip
d/b/a Elm Street Auto
501 Elm Street, Manchester, NH 03103

Re: UST ID # 0-113429

**AMENDMENT BY CONSENT
TO ADMINISTRATIVE ORDER**

No. WMD 05 - 004

A. INTRODUCTION

This Amendment by Consent to Administrative Order No. WMD 05-004 ("Amendment") is issued by the Department of Environmental Services, Waste Management Division ("DES") to and with the consent of David Filip. This Amendment to the Order is effective upon the date of signature by all parties.

Administrative Order No. WMD 05-004 ("the Order"), was issued by DES on June 28, 2005 pursuant to RSA 146-C. Section E., Paragraph 1 of the Order required that Mr. Filip permanently close the UST systems on the Property. Mr. Filip does not have sufficient funds at this time to complete the work. Mr. Filip has asked DES to remove the tanks, through a contractor, in the first instance and repay the state for the costs associated with removal, testing and remediation by periodic payments.

B. AMENDMENT

The parties agree that the Order is revised as follows:

1. That Sections "E" and "F" of the Order shall be deleted in their entirety and replaced with the following paragraphs:

"E. ORDER

Based on the above findings, DES hereby orders David Filip, and David Filip agrees, to undertake and complete the following actions by February 1, 2006:

1. Provide access to the Property for DES and its contractors to conduct any and all necessary work associated with permanent closure of the two UST systems described in Section C of this Order, in accordance with Env-Wm 1401.18.
2. Assist DES and its contractors with identifying Property lines and all underground piping and utilities.
3. Provide unrestricted access to the Property for temporary storage of equipment and materials during the permanent closure of the two UST systems.
4. Remove all items from the work area, prior to arrival of the contractor, which may interfere with performance of the UST systems closure.

5. Acknowledge that DES will place a lien on the Property equal to the cost associated with the UST systems closure. DES's contractor, Cyn Environmental Systems, has submitted a "not-to-exceed" estimate of \$15,665 for the permanent closure of the UST systems. The parties agree that this estimate does not include the costs associated with the removal or disposal of the associated dispensers, any contaminated soil that may be present or any other costs, other than those noted and associated with the tank removal only.
6. Acknowledge that the total lien must be discharged prior to DES approval of any future engineering plans for the installation of one or more motor fuel tanks, or upon any conveyance of the Property. Acknowledge that statutory judgment interest applies to the outstanding costs from the date of completion of the tank removal and a periodic payment plan may be entered into by the parties.
7. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent to DES as follows:

Lynn A. Woodard, P.E., Supervisor
Oil Remediation and Compliance Bureau
PO Box 95
Concord, NH 03302-0095


F. CONSENT AND WAIVER OF APPEAL

1. By execution of this Amendment by Consent to Administrative Order No. WMD 05-004, David Filip agrees that this Order, as amended, shall apply to and be binding upon David Filip and agrees that this Order, as amended, may be entered and enforced by a court of competent jurisdiction.
 2. By execution of this Amendment by Consent, David Filip waives any right to appeal this Amendment or the original Order provided by statute, rule, or common law, including without limitation the right to appeal to the Waste Management Council, and waives any right to object to the entry and enforcement of the Order, as amended, by a court of competent jurisdiction.
 3. Upon execution of this Amendment by David Filip, and acceptance of it by the Division Director and the Commissioner of DES, the Division agrees to withdraw the associated proposed administrative fine, Docket No. AF 05-038."
2. In all other respects the Order shall remain in full force and effect.


David Filip, Owner

Date: 11/26/06

NH Department of Environmental Services


Anthony P. Giunta, P.E., Director
Waste Management Division

Date: 2 / 10 / 06


Michael P. Nolin, Commissioner

Date: 02 15 06

cc: Gretchen Hamel, Esq., Legal Unit Administrator /
ec: Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
James Martin, DES Public Information Officer
Lynn A. Woodard, P.E., WMD UST Supervisor
Thomas R. Beaulieu, WMD UST Chief